

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CORRINA J. MURATELLA,

Plaintiff,

vs.

NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION,

Defendant.

4:16-CV-3168

MEMORANDUM AND ORDER

This matter is before the Court on the defendant's partial motion to dismiss ([filing 4](#)) pursuant to [Fed. R. Civ. P. 12\(b\)\(6\)](#). The defendant's motion will be denied.

The defendant's entire argument is based on a typographical error in the plaintiff's complaint. See [filing 5](#). The complaint alleges that the defendant "failed to collect or maintain medical information regarding the Plaintiff in separate medical files and [keep] it confidential" contrary to Neb. Rev. Stat. § "1107.02(m)(iii)(B)." [Filing 1-1 at 6](#). The defendant points out that section "1107.02(m)(iii)(B)" does not exist, so the defendant concludes that "any claim asserted by [the plaintiff] under this phantom statute should be dismissed." [Filing 5 at 1](#).

The defendant's argument is rather pedantic. It is obvious that the plaintiff was referring to [Neb. Rev. Stat. § 48-1107.02 \(Cum. Supp. 2016\)](#), which was cited in the previous paragraph of the complaint. See [filing 1-1 at 6](#). And a cursory glance at the statute indicates that the plaintiff's claim relies on § 48-1107.02(i)(iii)(B).¹ But more importantly, it is the facts alleged in a complaint, and not the legal theories, that state a claim. [Topchian v. JPMorgan Chase Bank, N.A., 760 F.3d 843, 849 \(8th Cir. 2014\)](#). The defendant's motion and supporting brief do not address the *facts* alleged by the plaintiff. See, [filing 4](#); [filing 5](#). There is simply no basis for the defendant's motion to dismiss. Let's move on, and be more circumspect in future filings.

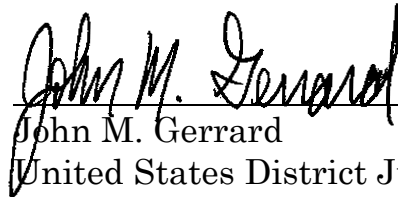
¹ To be clear: the Court is not suggesting that the plaintiff has stated a claim for relief pursuant to this subsection—just that a typo in the citation is not fatal to recovery.

IT IS ORDERED:

1. The defendant's motion to dismiss ([filing 4](#)) is denied.
2. Pursuant to Rule 12(a)(4)(A), the defendant's answer shall be filed on or before February 10, 2017.

Dated this 27th day of January, 2017.

BY THE COURT:



John M. Gerrard
United States District Judge